IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

OP.No. 5799 of 1997(M)

R.A.NO.64/1995 IN GTA 36/1985 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

PETITIONER:

THE COMMISSIONER OF GIFT-TAX,
COCHIN.

BY STANDING COUNSEL FOR GOVT. OF INDIA (TAXES) MR.GEORGE K.GEORGE

RESPONDENT:

SHRI.P.K.VARATHAPPAN,
C/O.P.K.UTHUPPU & BROTHERS,
PAZHANJI.

THIS ORIGINAL PETITION HAVING COME UP FOR FINAL HEARING ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A TRUE COPY OF THE ASSESSMENT ORDER DATED 10.10.84

ANNEXURE B TRUE COPY OF THE ORDER OF THE APPELLATE ASST. COMMISSIONER DATED 20.3.1985

ANNEXURE C TRUE COPY OF THE ORDER OF THE TRIBUNAL DATED 9.12.94

ANNEXUREE D TRUE COPY OF THE REFERENCE APPLICATION AND ITS ENCLOSURE DATED 20.3.95

ANNEXURE E COPY OF THE ORDER OF THE TRIBUNAL DATED 30.9.96

/ TRUE COPY /

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.5799 of 1997

Dated, this the 19th day of July, 2007

JUDGMENT

H.L.Dattu, C.J.

This is a petition filed by the Revenue under Section 26(3) of the Gift-tax Act, 1958 (Act for short) for the assessment year 1982-83.

2. The respondent was a partner of M/s.M/s.P.K.Uthuppu & Brothers with 25% share. He retired from the partnership firm during the previous year relevant to the assessment year 1982-83. The assessing officer has completed the assessment determining the taxable gift at Rs.3,41,150/- being of the opinion that the right to share in future profit of the firm as goodwill is forfeited by the assessee by retiring from the partnership firm. Aggrieved by the findings and conclusions reached by the assessing officer, the assessee had filed appeal before the Commissioner of Income Tax. The said appellate authority has allowed the appeal and set aside the orders passed by the assessing authority under the provisions of the Gift Tax Act.

3. The Revenue aggrieved the aforesaid order had carried the matter in appeal before the Income Tax Appellate Tribunal. The Tribunal following the decision of this Court in the case of **Commissioner of Gift Tax** v. **T.M.Luiz Kannamally** (180 ITR 257) has rejected the appeal filed by the Revenue.

4. The Revenue had filed an application before the Tribunal under Section 26(1) of the Act requesting the Tribunal to refer the following question of law for consideration and decision by this Court. The said question of law reads as under:

> "Whether, on the facts and in the circumstances of the case, when a partner retired from the firm, is there a gift element in respect of his right to share in the future profits or goodwill in favour of the remaining partners?

5. The Tribunal rejected the application filed by the Revenue under Section 26(1) of the Act.

6. The Revenue is before us in this petition filed under Section 26(3) of the Act to state the case and refer the aforesaid question of law for our consideration and decision.

7. The question of law to which the Revenue wants us to consider and decide is already decided by the apex Court in the case of **Commissioner of Gift Tax** v. **T.M.Louiz** [2000) 245 ITR 831]. In the said decision the apex Court has stated as under:

> "The definition of 'gift' makes it clear that there has to be a transfer by one person to another of movable or immovable property; such transfer has to be voluntary and without consideration in money or money's worth. What is, therefore, absolutely essential for the purpose of a gift is a transfer of property. "Transfer of property" is defined for the purpose of the Gift-tax Act as any disposition or conveyance, or assignment or settlement or delivery or payment or other alienation of property.
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> When a partner retires from a partnership, the partnership continues. The assets and the goodwill of the firm continue to remain the assets and the goodwill of the firm. All that the retiring partner gets is the value of his share in the partnership assets less its liabilities. It cannot, in such circumstances, be held assuming that the retiring partner received less than what was his due, that the difference was something that he had transferred to the continuing partners within the meaning of "transfer of property" for the purposes of the Gift-tax Act, 1958, or that there was a gift liable to gift-tax. The word "settlement" in the definition of "transfer of property" in the Gift-tax Act takes colour from the context of the definition and its neighbouring words and means a settlement upon trust and not a settlement of accounts.
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> During the accounting year relevant to the assessment

> year 1973-74, the assessee retired with effect from April 1, 1972, from two firms in which he was a partner. The Gift-tax Officer assessed him to gift-tax on the basis that, upon such retirement, there was a gift because the assessee had surrendered his rights in the firms. However, the Tribunal and the High Court held that gift-tax could not be levied. On appeal to the Supreme Court:
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> Held, dismissing the appeal, that when the assessee retired from the two firms, he received the value of his shares therein. There was merely an adjustment of rights between the retiring partner and the continuing partners in the assets of the partnership and there was no element of transfer of interest by the retiring partner to the continuing partners. Gift-tax could not be levied."

8. In view of the pronouncement of the apex Court, at this stage, it may not be necessary for this Court to direct the Tribunal to state the case and refer the question of law framed by the Revenue for our consideration and decision. In view of the above, the original petition filed by the Revenue requires to be rejected and it is rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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